

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Construction Requirements)
For Commercial Wide-Area 800 MHz)
Licensees Operating on Non-SMR)
Channels Through Inter-Category)
Sharing Pursuant to *Fresno Mobile*)
Radio, Inc. v. FCC)

PR Docket No. 93-144

To: The Commission

COMMENTS OF CHADMOORE WIRELESS GROUP, INC.

1. Chadmoore Wireless Group, Inc. ("Chadmoore") hereby submits its comments in response to the Public Notice released March 10, 2000, wherein the Commission seeks comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio ("SMR") commercial licensees that are part of a wide area system ("wide-area licensees") operating on non-SMR channels (*e.g.*, Business and Industrial Land Transportation ("BI/LT") channels) through inter-category sharing. Specifically, the Commission requests comment on whether it should adopt construction rules for incumbent wide-area licensees operating on BI/LT frequencies similar to those adopted in the *Remand Order*¹ for wide-area licensees operating on SMR frequencies and the applicable construction requirements for wide-area licensees that operate on BI/LT frequencies through inter-category sharing. For the reasons set forth herein, Chadmoore submits that the *Remand Order* impermissibly provides disparate

¹ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Remand*, FCC 99-399 (rel. December 23, 1999), 65 Fed. Reg. 7749 (pub. February 17, 2000) ("*Remand Order*").

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treatment to certain wide-area licensees and Chadmoore does not support any revision to the construction requirements to the extent that only those wide-area licensees receiving relief under the *Remand Order* benefit from the rule change and receive further disparate treatment.

Introduction

2. Chadmoore is a licensee and manager of numerous facilities throughout the nation in the 800 and 900 MHz Special Mobile Radio (“SMR”) service. Chadmoore has activated full market services over its 800 and 900 MHz authorized facilities in approximately 100 cities throughout a significant area encompassing 41 states, Puerto Rico and the U.S. Virgin Islands. Chadmoore holds additional authorizations and is in the process of further commercial roll-out of dispatch services on a wide area basis by which it is expected that Chadmoore’s services ultimately will be available in more than 168 markets. Chadmoore’s system encompasses facilities which operate on frequency assignments from the “lower 80”, “upper 200”, and General Category 800 MHz SMR channels and 900 MHz channels. Chadmoore provides basic voice and data telecommunications services to many businesses that do not always have the resources to afford the highly expensive and technologically complex services offered by large-scale CMRS entities. Many business entities in the markets served by Chadmoore have taken advantage of Chadmoore’s services and have realized the benefits of mobile telecommunications capabilities to enhance the efficiency of their operations.

A. The *Remand Order* Did Not Adequately Provide Required Regulatory Parity to all Licensees

3. The *Remand Order* did not provide equal treatment to all licensees as required by the D.C. Circuit Court in *Fresno Mobile Radio, Inc. v. FCC*.² In *Fresno Mobile*, the D.C. Circuit Court ruled that the Commission did not adequately explain “why incumbent wide-area SMR licensees were not allowed to apply the same coverage requirements as EA licensees, cellular licensees, or PCS licensees, given the fact that they are substantially similar CMRS providers . . .”³ and therefore, the FCC’s refusal to extend the interim coverage requirements to wide-area SMR licensees was arbitrary and capricious.⁴ The court also found “the Commission had not fully considered whether incumbent wide-area licensees are sufficiently different from 800 MHz EA licensees, cellular licensees and PCS licensees to justify the different requirements . . .”⁵ The court remanded these issues to the Commission for its consideration. Despite this ruling by the Court, the Commission’s *Remand Order* once again contradicts Section 332(c) of the Act, 47 U.S.C. § 332(c), because it did not apply the same regulatory scheme on all incumbent wide-area licensees. Due to this disparate treatment resulting from the *Remand Order*, the Commission erred by not granting wide-area licensee status to all appropriate licensees and as such would not provide equal treatment to all appropriate licensees should the rule changes be instituted as contemplated in the current Public Notice.

² *Fresno Mobile Radio, Inc., et. al. v. Federal Communications Commission*, 165 F.3d 965 (D.C.Cir., Feb. 5, 1999) (“*Fresno Mobile*”).

³ *Remand Order* at ¶ 9.

⁴ *Fresno Mobile* at p. 970.

⁵ *Id.*

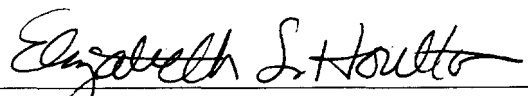
B. Chadmoore Supports the Adoption of Construction Rules as Contemplated in the Public Notice Should All Appropriate Licensees Be Afforded Relief

4. Should the Commission provide relief to all appropriate licensees pursuant to the *Fresno Mobile* decision, a revision of the construction rules for BI/LT frequencies authorized for SMR use through intercategory sharing would be appropriate. All such licensees should be allowed to satisfy construction requirements similar to those given to Economic Area (EA) licensees in the 800 MHz band. Such revision would be consistent with the goal of equal treatment provided that all appropriate licensees are able to avail themselves of such rule provision.

Conclusion

5. For the reasons set forth herein, Chadmoore supports the revisions of the construction requirements for BI/LT frequencies authorized for SMR use through intercategory sharing to the extent that all appropriate licensees are afforded the same opportunity to avail themselves of the benefits of the proposed rule change.

Respectfully submitted,



Peter Tannenwald
Elizabeth S. Houlton
Counsel for Chadmoore Wireless Group, Inc.

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, DC 20036-3101
202-728-0400 – phone
202-728-0354 - fax

Date: March 27, 2000

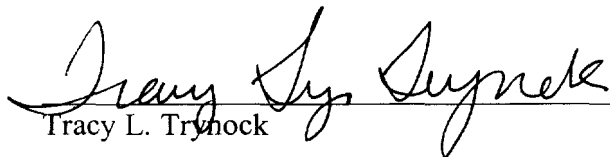
CERTIFICATE OF SERVICE

I, Tracy L. Trynock, hereby certify that on this 27th day of March, 2000, copies of the foregoing "Comments" have been served by hand delivery or first class mail, postage prepaid, upon the following:

Don Johnson*
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4A-332
Washington, DC 20554

Jennifer Mock*
Public Safety and Private Wireless Division
Policy and Rules Branch
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3C400
Washington, DC 20554

International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, DC 20036


Tracy L. Trynock

*Denotes hand delivery